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In The

Supreme Court of the United States

October Term, 1988

CHAUFFEURS, TEAMSTERS AND HELPERS, LOCAL NO. 391,

Petitioner,

v.

THOMAS C. TERRY, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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REASONS FOR DENYING THE WRIT

I. THE WEIGHT OF AUTHORITY AMONG THE CIRCUITS IS IN FAVOR OF THE RIGHT TO A JURY TRIAL IN DUTY OF FAIR REPRESENTATION SUITS AGAINST UNIONS WHEN LEGAL RELIEF IS SOUGHT.

In this Court's decisions discussing the constitutional right to a jury trial, *Ross v. Bernhard*, 396 U.S. 351 (1970),

and *Curtis v. Loether*, 415 U.S. 189 (1974), the Court articulated standards to determine a litigant's right to a jury trial under the Seventh Amendment of the United States Constitution. *See* discussion in Part II, *infra*. While there has been some divergence in applying these standards to duty of fair representation cases, the decided balance of lower court opinions is consistent with and supportive of the decisions of the United States District Court and United States Court of Appeals for the Fourth Circuit in this case, *Terry v. Chauffeurs, Teamsters & Helpers Local 391*, 676 F.Supp. 659 (M.D.N.C 1987), *aff'd* 863 F.2d 334 (4th Cir., 1988). *See, e.g., Minnis v. International Union*, 531 F.2d 850 (8th Cir. 1975); *Cox v. H. Masland & Sons, Inc.*, 607 F.2d 138 (5th Cir. 1979); *Smith v. Hussman*, 619 F.2d 1229 (8th Cir. 1980); *Quinn v. DiGiulian*, 739 F.2d 637 (D.C. Cir. 1984); *Wood v. Teamsters*, 565 F.Supp. 1011 (W.D. Mich. 1983) *reversed on other grounds*, 807 F.2d 493 (6th Cir. 1986); *Cook v. National Maritime Union of America*, 617 F.Supp. 1052 (S.D.N.Y. 1985); *Palmer v. Metro-North Commuter R.Co.*, 661 F.Supp. 1178 (S.D.N.Y. 1987); *White v. Anchor Motor Freight*, 683 F.Supp. 1177 (W.D.Mich. 1988); *Woods v. Dunlop Tire Co.*, 673 F.Supp. 117 (W.D.N.Y. 1987); *Grider v. Monin*, 637 F.Supp. 324 (M.D. Tenn. 1986).

The petitioner contends that there is an even split among four of the circuits with respect to this issue, disregarding the Eighth Circuit opinion in *Minnis* and the Fifth Circuit opinion in *Cox*. Acknowledging these contrary decisions, petitioner argues that because these cases were decided prior to this Court's decisions in three duty of fair representation cases, they should not be considered current representations of the views of their respective circuits. *See United Parcel Service v. Mitchell*, 451 U.S. 56 (1981); *Bowen v. United States Postal Service*, 459 U.S. 212 (1983); *DelCostello v. International Brotherhood of Teamsters*, 462 U.S. 151 (1983); and Petition, p. 12,n.3. However,

as both courts below in this case have pointed out, the petitioner greatly overstates the significance of the above three decisions, none of which involve the question presented in this case.

Thus, the Fourth Circuit's analysis in this case is consistent with most of the circuits which have ruled on this issue. And the circuits which have diverged did so in cases in which the plaintiffs were seeking primarily equitable relief which, under the application of the *Ross* test, would dictate a contrary conclusion. *See Leach v. Pan American World Airways*, 842 F.2d 285, 288 (11th Cir. 1988) (where the Court of Appeals for the Eighth Circuit pointed out that the Complaint sought only equitable relief); and *Deringer v. Columbia Transportation Div.*, 866 F.2d 859, 862-3 (6th Cir. 1989) (where the Court emphasized that it was not "establishing a per se rule [denying jury trials] for all such . . . suits," and pointed out that there was no demand for legal relief against the union).

Accordingly, any inconsistent decisions among the circuits, when considered in the contexts of the facts of the specific cases, seem to be more a result of differences in the relief demanded than in the application of the Seventh Amendment analysis under *Ross v. Bernhard*.

II. THIS COURT'S INTERPRETATION OF THE SEVENTH AMENDMENT SUPPORTS THE PLAINTIFFS' RIGHTS TO A JURY TRIAL IN THIS DUTY OF FAIR REPRESENTATION CASE.

As the Fourth Circuit pointed out at some length in its opinion in this case, this Court's analysis in recent

Seventh Amendment cases clearly supports the respondents' right to a jury trial. Specifically, in *Beacon Theaters, Inc. v. Westover*, 359 U.S. 500 (1959); *Dairy Queen, Inc., v. Wood*, 369 U.S. 469 (1962); *Ross v. Bernhard*, 396 U.S. 531 (1970); and *Curtis v. Loether*, 415 U.S. 189 (1974), this Court established clear principles which guide the application of the Seventh Amendment in the present context. First, in *Beacon Theaters* and *Dairy Queen*, it was emphasized that the procedural changes which came about with the enactment of the Federal Rules of Civil Procedure permitted a flexibility which had never existed, and which eliminated much of the "jurisdictional competition" between law and equity. This had the effect of eliminating the inadequacy of traditional equitable jurisdiction. Accordingly, if there are mixed issues common to equitable and legal claims, such issues should be tried by a jury, if properly demanded, except "under the most imperative circumstances" which the Court implied would be difficult, if not impossible, to show. *Beacon Theaters*, 359 U.S. at 511. Second the determination of the "legal" nature of a claim for Seventh Amendment purposes, should not be dependent on a semantical characterization of the overall action in traditional equitable terms, the procedural form which the action takes, or even on the primary remedy sought. Rather, the focus should be on the nature of specific underlying issues and consideration of all of the remedies to which the plaintiff may be entitled in his action. Thus, historically equitable actions, such as derivative stockholders' claims, are now triable by a jury, if they include underlying issues based on contract, tort or other legal relief sought. *Ross, supra.* Finally, in accordance with the strong preference voiced

by the Court for the Seventh Amendment, if there is any question, all doubts should be resolved in favor of a litigant's constitutional right to a jury trial.

In *Ross*, these principles emerged in a three-part test designed to determine whether the issue to be decided is a "legal" issue or "equitable" issue: (1) the pre-merger custom in regard to the issue (in law or equity); (2) the remedy sought by the plaintiffs; and (3) "the practicable abilities and limitations of juries." *Ross*, at 538, n. 10. In *Curtis* the Court, in strong terms, "dispelled" "[w]hatever doubt may have existed;" holding the Seventh Amendment applicable to all "actions enforcing statutory rights," and requiring a jury trial "if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law." 415 U.S. at 194. The Court found that the plaintiff's action was a "legal action" under the Seventh Amendment requiring a jury trial, finding parallels for the housing discrimination claims in that case in traditional common law torts. *Id.*, at 196-7.

In this duty of fair representation case, the lower courts correctly applied the *Ross* test. The respondents are invoking a statutory remedy under 29 U.S.C. Sec. 185, which was first recognized and later developed by the Supreme Court and which has close analogues in common law contract and tort. Since they are pursuing a legally enforceable right, they are entitled to the protection of the Seventh Amendment. Second, the respondents both in their pleadings and in fact are demanding primarily legal relief. As this Court has held in *Lorillard v. Pons*, 434 U.S. 575 (1978), back wages which the plaintiffs were

deprived of earning as a result of the defendant's unlawful conduct, are generally considered legal relief, unless the pertinent statute provides otherwise. Finally, as the lower courts observed, there can be little question that a jury is capable of deciding the factual issues in this case, particularly since the issues of liability and damages have been bifurcated. Petition, p. A-28.

CONCLUSION

For the reasons stated above, the respondents respectfully submit that the Petition for Writ of Certiorari in this case should be denied.

This the 22nd day of May, 1989.

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